

## SENATE BILL NO. 18

INTRODUCED BY B. HAMLETT

BY REQUEST OF THE WATER POLICY COMMITTEE

*a.c.  
minor edit changes  
not reflected*

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE OWNERSHIP OF A CHANNEL AND FORMER CHANNEL OF A NAVIGABLE RIVER OR STREAM FOLLOWING AN AVULSION; CREATING A PROCESS TO CLARIFY OWNERSHIP OF ABANDONED BEDS OF RIVERS AND STREAMS NOT ADJUDICATED FOR TITLE AFTER AN AVULSION RULEMAKING AUTHORITY; AMENDING SECTIONS 77-1-102 AND 77-1-103, MCA; REPEALING SECTION 70-18-202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION.** **Section 1. Sudden change in bed of navigable river or stream.** (1) Subject to subsections (2) and (3), ~~if a navigable~~ If a river or stream abandons its channel and forms a new channel as a result of an avulsion and if the segment of the river or stream where the avulsion occurred has been adjudicated as navigable for title purposes by a court of competent jurisdiction, the land constituting the old channel belongs to the owner of the shores through which the old channel flowed or, if the shores are owned by different owners, to the owners on two sides, divided by an imaginary line drawn through the middle of the old river or stream channel.

(2) An affected owner seeking title to the land described in subsection (1) shall notify the department of natural resources and conservation and describe with particularity the event that resulted in the formation of the new channel. The affected owner shall also provide the department with a survey and any other information the department considers necessary.

(3) Upon receiving the information from the affected owner, the department shall verify the information and determine whether the new channel was created by an avulsion. ~~The department shall also verify whether the land constituting the old channel is in equal value and, as closely as possible, equal in area to the land constituting the new channel. If the land constituting the old channel is greater in value or area, the affected owner shall pay the full market value of the difference upon the transfer of title. Ownership may not vest in the affected owner unless the board of land commissioners approves the exchange or sale.~~ If the

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1 department determines the new channel was formed by an avulsion and  
2 the old channel is abandoned, the department shall recommend to the  
3 board that the state and the affected owner exchange quitclaim deeds  
4 for the properties affected by the avulsion.

5 (4) Upon approval by the board and the exchange of quitclaim deeds, the affected  
6 owner shall notify the department of revenue and the clerk and recorder of the county in which the affected  
7 property is located of the change in ownership and submit any information necessary to update the applicable  
8 ownership records.

9 (5) The land constituting the old channel is subject to property taxation payable by the affected owner  
10 from the date the ~~board approves the transfer or sale~~ the quitclaim deeds are exchanged.

11 (6) The department of natural resources and conservation and the department of revenue may adopt  
12 rules to implement the provisions of this section.

13 (7) Ownership remains unchanged for land that constituted an island before the avulsion occurred and  
14 that is not wholly surrounded by water after the river abandoned the old channel.

15 ~~(8) If the affected owner described in subsection (1) receives title to the old channel, the land under the~~  
16 ~~water of the new channel belongs to the state pursuant to 70-1-202.~~

17 (8) (a) If an avulsion occurs on a segment of a river or stream  
18 that has not been adjudicated as navigable for title purposes by a  
19 court of competent jurisdiction, but where the department determines  
20 historic evidence exists that the segment of river or stream was  
21 navigable at the time of statehood, an owner may seek to clarify title  
22 to the property affected by the avulsion.

23 (b) To seek title clarification, the affected owner shall submit  
24 the information to the department required by subsection (2).

25 (c) If the department determines the new channel was formed by  
26 an avulsion and the old channel is abandoned, the department shall  
27 recommend to the board that the board issue a disclaimer of interest  
28 for the abandoned channel.

29 (d) Upon approval by the board, the affected owner may cite the  
30 disclaimer of interest to support an ownership claim in a quiet title

1 action filed in a district court.

2 (e) Upon obtaining a quiet title judgement on the abandoned  
3 channel, the affected owner shall notify the department of revenue and  
4 the clerk and recorder of the county in which the affected property  
5 is located of the change in ownership and submit any information  
6 necessary to update the applicable ownership records.

7 (f) The land constituting the old channel is subject to property  
8 taxation payable by the affected owner from the date of the quiet  
9 title judgement.

10 (9) For purposes of this section:

11 ~~—— (a) "avulsion" means a sudden and perceptible change in the course of a river or stream that creates~~  
12 ~~a new river or stream channel and that results in an abandoned bed as defined in 77-1-102 along the course~~  
13 ~~of the old channel;~~

14 ~~—— (b) "navigable river" means a river or stream adjudicated as navigable for title purposes by a court of~~  
15 ~~competent jurisdiction.~~

16

17 **Section 2.** Section 77-1-102, MCA, is amended to read:

18 **"77-1-102. Ownership of certain islands, abandoned riverbeds, and riverbeds.** (1) ~~The~~ Except as  
19 provided in [section 1] and subsection (2) of this section and subject to Title 70, chapter 18, part 2, the The  
20 following lands belong to the state of Montana to be held in trust for the benefit of the public schools of the state:

21 ~~(a) all lands lying and being in and forming a part of the abandoned bed of any navigable stream or lake~~  
22 ~~in this state and lying between the meandered lines of the stream or lake as shown by the United States survey~~  
23 ~~of the stream or lake;~~

24 (b) all islands existing in the navigable streams or lakes in this state that have not been surveyed by  
25 the government of the United States; and

26 (c) all lands that at any time in the past constituted an island or part of an island in a navigable stream  
27 or lake, ~~except those lands that are occupied by and belong to the adjacent landowners as accretions.~~

28 (2) This section does not apply to lands that are occupied by and belong to riparian landowners if the  
29 lands were formed by accretions.

30 ~~(2)(3)~~ State-owned riverbeds are public lands of the state that are held in trust for the people as

provided in Article X, section 11, of the Montana constitution.

(4) For purposes of this section:

(a) "abandoned bed" means a riverbed, streambed, or lakebed with no water over it AT THE LOW WATER MARK;

~~(b) "navigable stream" has the same meaning as navigable river as defined in [section 1]."~~

~~Section 3. Section 77-1-103, MCA, is amended to read:~~

~~"77-1-103. Administration of lands. (1) The board shall sell lands under [section 1] and 77-1-102(1) in the same manner as other school lands of the state are sold.~~

~~(2) The board may sell the lands under 77-1-102(1) or lease the lands under 77-1-102 without having them surveyed, unless the board considers it to be to the best interests of the state to have the lands surveyed as in 77-1-104.~~

~~(3) The proceeds from the leasing and sale of the lands under [section 1] and 77-1-102 must be disposed of in the same manner as disposition is made of the proceeds from the leasing and sale of school lands of the state.~~

~~(4) The income received from the leasing, licensing, or other use of lands under 77-1-102(1) or riverbeds under 77-1-102(2)(3) must be deposited in accordance with 17-3-1003(5)."~~

NEW SECTION. Section 4. Repealer. The following section of the Montana Code Annotated is repealed:

70-18-202. Sudden removal of bank -- right of owner to reclaim.

NEW SECTION. Section 5. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 70, chapter 18, part 2, and the provisions of Title 70, chapter 18, part 2, apply to [section 1].

NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 7. Applicability. [This act] applies to avulsions occurring on or after [the effective date of this act].

- END -